

## Department of the Army, DoD

## § 518.21

statutory purpose of the FOIA in informing citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

### § 518.16 Electronic data.

Electronic data are those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. See § 518.10 (b)(2) and (c) for a discussion of computer software.

### § 518.17 Law enforcement investigation.

An investigation conducted by a command or agency for law enforcement purposes relating to crime, waste, or fraud or for national security reasons. Such investigations may include gathering evidence for criminal prosecutions and for civil or regulatory proceedings.

## POLICY

### § 518.18 Compliance with the FOIA.

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

### § 518.19 Openness with the public.

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(a) Operations Security (OPSEC). DA officials who release records under the FOIA must also consider OPSEC. The Army implementing directive is AR

530-1. Section 518.53 of this publication gives the procedure for FOIA personnel and the IDA to follow when a FOIA request appears to involve OPSEC.

(b) DA Form 4948-R. This form lists references and information frequently used for FOIA requests related to OPSEC. Persons who routinely deal with the public (by telephone or letter) on such requests should keep the form on their desks as a guide. DA Form 4948-R (Freedom of Information Act (FOIA)/Operations Security (OPSEC) Desk Top Guide) will be locally reproduced on 8½ x 11-inch paper. A copy for reproduction purposes is located at the back of this regulation. The name and telephone number of the command FOIA/OPSEC adviser will be entered on the form.

### § 518.20 Avoidance of procedural obstacles.

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this regulation and any supplemental regulations published by the DoD Components.

### § 518.21 Prompt action on requests.

When a member of the public complies with the procedures established in this part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When a Component has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. A DoD Component may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the complement processing the request.

(a) The 10-day period prescribed for review of initial requests under the

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FOIA (5 U.S.C. 552(a)(6)) starts only when the request—

- (1) Is in writing.
- (2) Reasonably describes the record requested.
- (3) Is received by the proper official designated to answer the request (see appendix B to this part).

(4) Meets the procedural requirements of this part (see § 518.85(b)(9)).

(b) All requests shall refer explicitly or implicitly to the Freedom of Information Act, to ensure their prompt recognition as FOIA actions.

(c) Members of the public who make FOIA requests should carefully follow the guidance in this part. They should send requests to the office that has the desired record or to a specific agency FOIA official for referral. The Army Freedom of Information and Privacy Act Division, Information Systems Command, Attn: ASQNS-OF-F, room 1146, Hoffman Building I, Alexandria, VA 22331-0301 can supply correct addresses.

(d) See Army Regulation 340-21 for Privacy Act procedures.

[56 FR 48932, Sept. 26, 1991, as amended at 56 FR 56010, Oct. 31, 1991]

### § 518.22 Use of exemptions.

(a) It is the DoD policy to make records publicly available, unless they qualify for exemption under one or more of the nine exemptions. Components (IDA) may elect to make a discretionary release, however, a discretionary release is generally not appropriate for records exempt under exemptions 1, 3, 4, 6, and 7(c). Exemptions 4, 6, and 7(c) cannot be claimed when the requester is the submitter of the information.

(b) Parts of a requested record may be exempt from disclosure under the FOIA. The proper DA official may delete exempt information and release the remainder to the requester. The proper official also has the discretion under the FOIA to release exempt information; he or she must exercise this discretion in a reasonable manner, within regulations. The excised copies shall reflect the denied information by means of Blackened areas, which are Sufficiently Blackened as to reveal no information. The best means to ensure illegibility is to cut out the informa-

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tion from a copy of the document and reproduce the appropriate pages. If the document is classified, all classification markings shall be lined through with a single black line, which still allows the marking to be read. The document shall then be stamped “Unclassified”.

[56 FR 48932, Sept. 26, 1991, as amended at 56 FR 56010, Oct. 31, 1991]

### § 518.23 Public domain.

Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in Components’ reading rooms to facilitate public access. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

### § 518.24 Creating a record.

(a) A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part and the FOIA. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create or compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which